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SUMMARY OF COMMENT LETTERS REGARDING CONDITIONAL WAIVERS PROPOSED FOR BOARD ADOPTION AND STAFF RESPONSES

Resolution No. R5-2003-0105 *Conditional Waivers of Waste Discharge Requirements for Discharges from Irrigated Lands Within the Central Valley Region* (2003 Conditional Waivers) expires on 31 December 2005. As part of the effort to renew the 2003 Conditional Waivers, staff of the Central Valley Regional Water Quality Control Board (Central Valley Water Board) held many meetings and public workshops to discuss with stakeholders the renewal process and what changes to the 2003 Conditional Waivers stakeholders would like to see.

On 5 October 2005, Central Valley Water Board staff circulated tentative Irrigated Lands Conditional Waivers (Tentative Renewal Documents) for a 30-day public comment period. Staff summarized the comments received on the Tentative Renewal Documents in the 10 November 2005 *Summary Of Comment Letters Regarding Renewal Of Irrigated Lands Conditional Waivers* (Summary of Comment Letters) and provided responses in the 10 November 2005 *Responses To Comments Regarding Renewal Of Irrigated Lands Conditional Waivers* (Response to Comments). Also on 10 November, staff circulated revised documents (Proposed Orders) in strikethrough to show the changes proposed to the Tentative Renewal Documents based on the comments.

The following is a summary of comment letters received regarding the Proposed Orders, which the Central Valley Water Board will consider adopting at a 28 November 2005 Central Valley Water Board hearing. Following each comment is a response in italics. Some of these comments were addressed in the 10 November Response to Comments, so those responses include references by numbers to the 10 November document.

Mr. Damian Appert, Central Valley Farmer, 17 November 2005
Mr. Appert requests the Board extend the 2003 Conditional Waivers for one year based on the short time available to review to the new Proposed Orders and allow time to resolve and fully address issues. The Orders are not appropriate for his size and manner of operation, which is drip irrigation with no tailwater runoff, yet he is subject to the same expensive and time consuming standards as large farm operations. He fears litigation with neighboring farmers whose runoff passes through his property and enters waterways adjoining his property.

Response: If growers, farmers, landowners, etc. are complying with the terms and conditions of the Conditional Waivers, they are not subject to lawsuits under the California Water Code, which does not have a provision for third party lawsuits. The remaining comments are addressed in responses 1 and 4 of the Response to Comments.

Mr. John Y. Barbee, Winters, 16 November 2005
Mr. Barbee recommends extending the 2003 Conditional Waivers for a minimum of one year, but preferably five years, stating it has worked well for both farmers and the Central Valley Water Board. His coalition, the Sacramento Valley Water Quality Coalition, has not had adequate time to study and analyze the new proposed requirements. Allowing more time will result in conditions that are mutually agreeable between the growers and Central Valley Water Board. The Central Valley Water Board should direct staff to work with his coalition and all other agricultural interests whose goal is to enhance water quality and maintain and promote a vibrant and agricultural community.

Response: These comments are addressed in response 1 of the Response to Comments.

Mr. Michael O. Finch, Yolo County Grower, 15 November 2005
Mr. Finch recommends extending the 2003 Conditional Waivers for one year so watershed members can work with staff to resolve outstanding issues. Some items requested in the Proposed Orders are not possible. Growers oppose providing their names due to fears of litigation but were willing to provide names of non-participants. However, this compromise was "rescinded at the last minute as were other requirements including meeting of drinking water standards at agricultural drainage points." People do not drink undiluted, untreated drain water, so this standard is not appropriate. The Department of Pesticide Regulation has offered its services to provide more achievable results. Staff should "work with the growers and not condemn them leaving us with no alternative but to leave the State."

Responses: The drinking water standards referenced in the comment are the Maximum Contaminant Levels (MCLs) adopted by the Department of Health Services. The Chemical Constituents objective in the Basin Plans incorporate MCLs by reference as applicable limits for chemical constituents in waters designated as municipal or domestic supply (MUN). In addition, waters for which the Basin Plans do not specify beneficial uses are assigned MUN use in response to State Water Resources Control Board Resolution No. 88-63, the Sources of Drinking Water Policy. Some argue that the water in agricultural drains is not suitable for drinking, and therefore should not be considered a municipal or domestic water supply. However, these waters often flow into waters that are sources of municipal or domestic supply or that could be suitable for such use in the future. This is why staff included MCLs in Draft Table 1 of Attachment A. The Basin Plans Chemical Constituent objective also states that the Regional Water Board may apply limits more stringent than MCLs to protect all beneficial uses. The remaining comments are addressed in responses 1, 2, and 4 of the Response to Comments.

Mr. Anthony L. Francois, California Farm Bureau Federation (Farm Bureau), 21 November 2005
The Farm Bureau objects to the Notice of Public Hearing referring to a cut-off day and time for comments on the Proposed Orders when during a 31 October meeting, staff stated that the record for this item would stay open through the hearing and that the deadlines published would only apply to the Board's obligation to respond in writing to submitted comments. The Farm Bureau "concurs in and incorporates by reference the comments submitted on today's date by the Sacramento Valley Water Quality Coalition and others, including the legal memorandum prepared by Somach, Simmons & Dunn addressing the legal inadequacies of the proposed changes to the Irrigated Lands Program." The letter states although many of the radical proposed changes have been withdrawn, staff still propose unnecessary and ill-advised changes. The Farm Bureau recommends the Board extend the expiration date of the 2003 Conditional Waivers by five years without changing or adding a new beginning date, and refer the staff's proposed changes to the Technical Issues Committee. The letter points out that the

recently adopted clarifications regarding trade secrets and property access are absent from the renewal document.

The letter incorporates the comments from "over 100 Farm Bureau members" by reference. "These comments call into question the validity of removing potentially enormous areas of irrigated lands, as currently defined by the Irrigated Lands Program, from the Program, without any environmental analysis or justification whatsoever. This proposed action is remarkable given the consistent statements of the Board's staff, in discussions regarding the development of a *de minimus* or 'low threat' waiver, that the Board lacked the necessary technical and environmental data to support such a decision." The letter states staff did not identify these comments clearly, or explain to the Board or the public, that so many members of the public had objected to such a significant deregulation.

The Farm Bureau states that the deregulation of rural residential parcels will likely have significant adverse effects on the environment for a variety of reasons, and the Farm Bureau considers the exclusion of so many acres a significant change that requires further analysis in order to comply with the California Environmental Quality Act. Pesticide and fertilizer use on rural residential parcels is largely unrestricted and unreported, occurs generally without the benefit of professional advice, and there is a great density of structures in areas in rural residential land use which poses a much greater risk for run-off that contain toxic amounts of metals and other substances. However, the Farm Bureau does not take a particular position as to the appropriate regulation of these rural residential parcels at this time, but they are currently regulated under the Irrigated Lands Program. The implied reason for deregulating rural residential parcels with irrigated lands is simply that they do not sell livestock or produce. It would appear that the only reason for making this distinction is cultural or political, not scientific or other water quality basis. The Board's adoption of such an exemption would appear to be arbitrary and capricious and otherwise contrary to law.

Response: Staff did not receive any comments from the Sacramento Valley Water Quality Coalition or Somach, Simmons & Dunn on or after 21 November 2005, as referenced in the Farm Bureau letter. The Notice of Public Hearing does not preclude stakeholders from providing comments after the 5:00 p.m. deadline on 21 November 2005. It was merely a timeframe for comments in which staff would be able to summarize and provide responses prior to the Central Valley Water Board hearing. The recently adopted clarifications regarding trade secrets and property access are included. See Attachment B Conditions A.9 and B.11. Furthermore, staff does not agree that we did not identify the form letter comments clearly, or explain to the Board or the public, the number of form letters that included an objection to "significant deregulation." We do not concur this is deregulation. The Summary of Comment Letters states that staff received 115 form letters and summarizes the comments about the "exclusions" using the form letters' last sentence, which is the objection to exempting properties based on whether the production is sold commercially. The remaining comments are addressed in response 1 of the Response to Comments.

Mr. Hal Huffsmith, Senior Vice President of Vineyard Operations, Sutter Home Family Vineyards, 18 November 2005

Mr. Huffsmith has concerns about the "suggested approval and implementation time frame and the irrational and arbitrary imposition of standards generated by the CVRWQCB staff" which are inconsistent with the "'cooperative solution' strategy proposed by the Board to push new rules and standards forward in an unreasonably tight schedule without allowing stakeholders an opportunity to voice concerns and establish constructive dialogue with the Board and staff." The letter states the

implementation of "drinking water standards" to irrigation tailwater seems agenda driven and unrealistic since most of the Yolo County irrigation tailwater empties into the Bypass "in addition to the knowledge that some County municipal well water does not meet these proposed standards." Mr. Huffsmith recommends extending the 2003 Conditional Waivers for one year to allow stakeholders an opportunity to voice their concerns and hopefully negotiate a viable program that will enhance water quality for all Californians.

Response: These comments are addressed in the response to Mr. Finch's comments above and in responses 1 and 4 of the Response to Comments.

Ms. Nancy Lea, Central Valley Grower, 18 November 2005

Ms. Lea requests the Board not require growers to submit names, addresses, and other identifying information to the Board, where it could become public record, and possibly subject individual farmers, who are in compliance with coalition requirements, to threat of litigation. Farmers cannot afford the possibility of legal harassment. Ms. Lea supports reasonable efforts to obtain information about growers and/or landowners who have not joined the appropriate Coalition Group. The email includes concerns "about the requirement that receiving water standards for tailwater be drinking water standards" and states the water that the growers receive to irrigate does not meet these standards. Standards should be based on the quality of the water coming onto the farmer's operation and on the uses to which the receiving water will be put. In Yolo County, the receiving water does not empty into any water body with drinking water uses. This requirement is a departure from "the requirement of a Water Quality Management Plan," which imposes an impossible financial burden on individual farmers or coalitions. Yolo County coalition has a high degree of participation, and staff should focus efforts on those areas that do not have the same level of participation.

Response: If growers, farmers, landowners, etc. are complying with the terms and conditions of the Conditional Waivers, they are not subject to lawsuits under the California Water Code, which does not have a provision for third party lawsuits. See response to Mr. Finch's comments on page 2 regarding the "drinking water standards" comment. The remaining comments are addressed in responses 1, 2, and 4 of the Response to Comments.

Mr. Marshall Lee, Department of Pesticide Regulation (DPR), 9 November 2005

DPR recommends staff reject the performance goals in the Implementation Chapter of the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins, Fourth Edition, revised September 2004* for the pesticides molinate and thiobencarb because these goals are based on "interim water quality guidelines." The values were "very preliminary," later revised upward before they were formally published, and derived using an unconventional methodology that to DPR's knowledge does not conform to any methods otherwise recognized by the Regional Board. The email includes text from the Basin Plan that the performance goals "are interim in nature and…are not to be equated with concentrations that meet the water quality objectives." The email also states the table that accompanies the text indicates that in 1993, "the Regional Board will review the latest technical and economic information (and) determine if the performance goals should be adjusted." This review was not done nor was the Board offered an opportunity to adjust the performance goals and amend the Basin Plan.

Response: As noted in the Basin Plans and in Table 1, the listed molinate and thiobencarb values are performance goals used to evaluate the effectiveness of management practices implemented by the rice

industry to meet the Basin Plans' narrative pesticide water quality objective. The industry is meeting the performance goals, and there is a mechanism in place to address any issues that may arise.

Ms. Debra Liebersbach, Turlock Irrigation District (TID), 21 November 2005
The TID lists out 14 comments on the Proposed Orders.

1) Although TID sees as a positive signal the staff's action to remove the Monitoring and Reporting Programs (MRP) from the Proposed Orders in order to work through MRP concerns with the Technical Issues Committee, TID recommends that the MRPs be brought before the Board for adoption instead of issued by the Executive Officer.

2) TID continues to have concerns that each party covered by the Individual Discharger Conditional Waiver must "implement and evaluate management practices implemented by growers." TID recommends modifying Finding No. 29 to "…implement and evaluate <u>their own</u> management practices…".

3) Staff apparently left off the revision to Finding No. 38 of the Individual Discharger Proposed Order that was revised in Finding No. 39 of the Coalition Group Proposed Order.

4) The reference to "Coalition Group" in Finding No. 42 should be changed to "Individual Discharger."

5) Staff should change Finding No. 45 to include "from" as was added to the Coalition Group Proposed Order.

6) The Response to Comments adequately addresses comments regarding discharges to a conveyance system, but the language in the response was not included in Attachment A. Staff should add the following language to the end of the definition of "Discharger:"
   "The individual discharger to a conveyance system (a conveyance system that discharge to, or is itself, waters of the State) is the party responsible for its discharge, and must apply for either a waiver or apply for waste discharge requirements."
   Furthermore, the definition of Discharger in the Coalition Group Proposed Order does not include water districts. It is unclear whether this was just an oversight or an intentional omission.

7) The definition of "Discharges of waste from irrigated lands" is unclear and potentially overbroad in that it may include activities that are not actually discharges of waste. TID suggests the following be added to the end of the definition:
   ""Discharges of waste from irrigated lands" does not include the conveyance of waste discharged from irrigated lands to waters of the State by others. The individual discharger to a conveyance system that discharge to (sic), or is itself, waters of the State is the party responsible for its discharge, and must apply for either a waiver or apply for waste discharge requirements."

8) Attachment A of the Individual Discharger Proposed Order, page 3, item 3 misspells canals as "cannels."

9) The definition of "Water District" in the Individual Discharger Proposed Order Attachment A should be revised to conform to the definition in California law by deleting the language that has

been added at the end of this section to describe circumstances under which a Water District may also be a 'discharger." The language is inappropriate in this section, it misstates the law, and is inconsistent with the statement in the Response to Comments. The "Water District" definition is perhaps intended to expand upon an analogy drawn in the Response to Comments between a municipal collection system that discharges to a stream. The analogy does not withstand scrutiny as there is a significant difference between the regulatory authority governing a municipal collection system and the conveyance systems operated by Water Districts. Municipal collection systems discharging to streams are regulated under the Federal Clean Water Act as "point sources" discharging to "waters of the United States." Discharges consisting primarily of agricultural return flows, however, are exempt from the NPDES program of the Federal Clean Water Act and are regulated under state law, which regulated discharges to "waters of the State." "Waters of the State" is defined far more broadly than "waters of the United States" which consist of just navigable waters and their tributaries. Therefore, it is consistent that a discharge of waste from a collection system would be regulated under the Federal system whereas a discharge to a supposedly analogous system would be regulated under the state system.

A better analogy for conveyance systems similar to irrigation canals would be a drain, ditch, or creek running across several parcels of land owned by various parties. The letter expounds on the analogy about a grower using water that passes through their property, that the water is "waters of the State," that each grower along the drain, ditch, or creek could potentially discharge waste, and that there could be dischargers not located along the drain, ditch, or creek that pipe the water containing waste to the drain, ditch, or creek. Each property owner is responsible for their own waste, not the downstream users. There is no basis under Porter-Cologne for making the furthest downstream user responsible for all the waste contributed from upstream users.

Once waste has been discharged to "waters of the State" flowing into and conveyed in TID's facilities by upstream dischargers, it cannot be "discharged" to those same waters again. The fact that water may pass over a weir or through a gate does not constitute a "discharge of waste to waters of the State," since the water of the State on the upstream side of the weir or gate is the same water as it is on the downstream side. The water upstream of the weir or gate already contains the waste in question. Passing through the weir or gate does not change the constituents in the waste and does not result in a "discharge of waste to waters of the State." The "waste is already in the water of the State before it passes the weir or gate. In short, "conveyance" of waters of the Sate that already contains waste is not a "discharge" of waste to those same waters. Please see correspondence from Archer Norris on behalf of TID, to Chairman Schneider, dated November 4, 2005 for a full discussion of this issue.

10) The Information Sheet and Table 1 of Attachment A in both the Coalition Group and Individual Discharger Proposed Orders are still considerably controversial regarding how to interpret and apply the appropriate "receiving water limits" for discharges to various water bodies regulated through this program. TID references Water Code Section 13241 stating that the process to adopt water quality objectives requires evaluation of possible conflicting factors with the ultimate goal of developing standards that provide reasonable regulation of water quality consistent with the best interests of the people of the state. The letter states that the water quality objectives in the Basin Plan were never considered for their potential application to non-stream, agriculturally dominated water bodies and therefore cannot be applied summarily to those water bodies without first undergoing the rigorous analysis required by Water Code Section 13241. Referring to Resolution No. R5-2005-0137 and State Water Board WQO 2003-0015, TID adds that applicable water quality

objectives are specifically tied to formally designated beneficial uses, that non-stream agriculturally dominated water bodies do not have formally-designated beneficial uses, and that it would be inappropriate to apply water quality objectives to particular water bodies based on certain presumed beneficial uses.

TID recommends removing Table 1 from Attachment A because "the various constituents to be evaluated are not known at this time, but will be determined through the Technical Issues Committee" and there are errors regarding the MCLs for color and turbidity. As monitoring parameters are determined, a table similar to Table 1 should be generated to clarify the numeric values or narrative standards by which the ultimate success of the program will be measured. The values in Table 1 will be helpful in determining practical quantitation limits "TRLs".

11) Attachment B in both the Coalition Group and Individual Discharger Proposed Orders contain "Dischargers shall implement management practices to improve and protect water quality and to achieve compliance with applicable receiving water limitations identified in Attachment A." The reference to "identified in Attachment A" invites confusion because applicable receiving water limits are those established in the Basin Plans, not those "identified in Attachment A." The requirement to "implement management practices…to achieve compliance with applicable receiving water limitations" may be impossible in some instances. TID cites an example of "natural conditions" and states that dischargers should not be held responsible for natural conditions or the discharges of others. The language should be modified so that management practices will be implemented when and if the impairments are due to practices of the discharger or in the instance of the Coalition Group, the Coalition member. There is similar language in other locations in the text of both Proposed Orders that should be revised for consistency and TID provides five of these.

12) Section E of Attachment B of the Individual Discharger Proposed Order should reference Individual Dischargers instead of Coalition Groups.

13) The Notice of Termination Form for the Individual Waiver should be modified to reflect the revisions to definitions within the Waiver Program.

14) Coalition Group Proposed Order page 16, item 6 should be modified to state, "…discharges <u>of waste</u> from irrigated lands do not impair beneficial uses…"

Response: Staff has proposed late revisions to address TID comments 3, 4, 5, 8, 12, 13, and 14. The other comments are responded to below.

1) Staff will consider this comment and discuss during a Technical Issues Committee Meeting.

2) Staff does not concur with the recommended language change. Finding No. 29 refers to what MRP No. R5-2003-0827 requires. Furthermore, Individual Dischargers need to evaluate other management practices to know what is effective. However, staff has modified Finding No. 29 regarding the evaluation of management practices to not be specific to growers.

6) It is not necessary to add the suggested statement to the Discharger definition, since the definition adequately covers this. Regarding Water District language in the Discharger definition, the phrase about Water Districts was purposely removed from the Discharger definition in Coalition Group

Conditional Waiver Attachment A and language added to the Water District definition. See also No. 9 below.

7) *In addition to response No. 6 above, Water Districts accept waste so they are responsible for any discharge of that waste to waters of the State. Whether the Water District "accepts" waste or not, once the waste is in the Water District canals or waterways, it is the Water District's responsibility.*

9) *We do not agree that the definition of water district does not conform to California law. However, for clarification, late revisions are proposed to the definition to state that for purposes of this Conditional Waiver, a water district includes the items listed. The last sentence that was added to the definition in the Coalition Group Attachment A will also be added to the definition in the Individual Discharger Attachment A. This sentence states under what circumstances a Water District is considered a Discharger. The reason for this is described more fully below.*

We agree that individual growers who discharge waste to a water district's conveyance system are responsible for those discharges. As such, they are required to comply with the Water Code, and many of them do so by joining Coalition Groups. Once the waste is in the Water District's conveyance system, which is considered waters of the state, TID states it cannot be discharged to those same waters again. This is true. However, the waste, which has been discharged by others, can be discharged from the conveyance system to downstream waters of the state. By action or inaction on the part of the District, this discharge can affect water quality and beneficial uses. A District can implement management practices to mitigate, reduce, or eliminate the effects. A District is responsible and accountable for what it does with water or sediment that contains the waste in its conveyance system. A District can choose how to manage this waste in its system, so has control over the waste and its effect on downstream waters. The Individual Discharger Conditional Waiver provides Districts an alternative to filing a Report of Waste Discharge for these types of discharges. Please see the 10 November Response to Comments regarding Archer Norris' 4 November letter.

10) *The proposed Orders, like the 2003 Conditional Waivers, set forth an iterative process for attaining receiving water limitations. The Proposed Orders require that dischargers or Coalition Groups on behalf of Dischargers monitor water quality to determine whether receiving water limitations have been exceeded. If so, the Coalition Group or Individual Discharger must evaluate, implement, and improve management practices. The Proposed Orders do not specify that an exceedance of a water quality objective or receiving water limitation will result in immediate enforcement as a violation, but rather will require the implementation of the iterative process. This approach is similar to the approach taken with respect to general permits, such as stormwater permits. It is not feasible in the Proposed Orders to set forth which receiving water limitations apply to each water body in the Region. The purpose of Table 1 is to set forth those receiving water limitations that are relevant to discharges of waste from irrigated lands to waters of the State. The Proposed Orders require the Coalition Groups and Individual Dischargers to address exceedances of "applicable" receiving water limitations through the iterative process set forth in the Proposed Orders. The receiving water limitations that are applicable to a particular location in the Central Valley Region may be addressed in the monitoring and reporting programs that are specific to a Coalition Group or Individual Discharger. A late revision is proposed to further clarify the Proposed Orders.*

Water Code section 13269 requires that any waiver be consistent with any applicable water quality control plan. The receiving water limitations are necessary to assure consistency with the Basin Plans and compliance with Water Code section 13269.

The Order cited by TID - In the Matter of the Review on its Own Motion of Waste Discharge Requirements Order No. 5-01-044 For Vacaville's Easterly Wastewater Treatment Plan, SWRCB WQO 2003-0015 - is not directly relevant to the adoption of a Waiver that is not subject to the Clean Water Act. In the case of the Vacaville matter, the NPDES permit was required to include effluent limitations where there was a reasonable potential to cause or contribute to an exceedance of a water quality standard. The State Water Board determined that if it appears that a use does not exist and could not be feasibly attained in the water body in the near future, the Regional Water Board should proceed to amend the Basin Plan and provide a reasonable time schedule. The Proposed Orders do not include effluent limitations, and the Central Valley Water Board is not bound to a requirement to the Clean Water Act time limitations to attaining compliance. Instead, the Proposed Orders require the Coalition Groups and Individual Dischargers to address exceedances of "applicable" receiving water limitations through the iterative process set forth in the Proposed Orders. The receiving water limitations that are applicable to a particular location in the Central Valley Region may be addressed in the monitoring and reporting programs that are specific to a Coalition Group or Individual Discharger.

In response to the comment, a clarification is proposed in the late revisions for Attachment A. The water quality objectives apply as set forth in the Basin Plan. Some objectives apply generally, some apply to specific water bodies, and some apply to specific uses. A new analysis under Water Code section 13241 is not required to implement receiving water limitations in a waiver. As explained above, applicable receiving water limitations may be determined in the monitoring reporting program.

The reference for color in Table 1 has been corrected in the late revisions, but the MCL limit listed for turbidity is correct.

11) *Attachment A refers to the Bain Plans and is described in the Proposed Orders. Therefore, the statement about achieving compliance with the receiving water limitations is clear. Furthermore, the Proposed Orders are not intended to have Dischargers use management practices to address natural conditions or discharges of others, but management practices are to be implemented to improve downstream water quality.*

Mr. Van Overhouse, Farmer and Landowner, Yolo County, 16 November 2005

Mr. Overhouse states he is upset with the new waiver requirements and the fact that they were made available at such a late date. His understanding is that "some of the initial water quality metrics were taken from a radical environmental web site" and when staff was confronted with this, "the quality numbers were changed to that of drinking water." It seems staff has an agenda beyond that mandated by the legislature and the Board needs to "reign in the staff and have them provide accurate input based on real science and not on their personal feelings." Growers have been working toward the goal of improved water quality for all, but he feels "betrayed and angry" by the new proposed set of goals, which he believes are unattainable and not based on good science. "There is no point in even trying if the goals cannot be attained except by converting to dry land farming." The Board should extend the 2003 Conditional Waivers until there is a consensus on a new set of goals agreed upon and if this cannot

be done, then "I seen (sic) no reason to continue participation in the Farm Bureau program." After a James Madison quote, Mr. Overhouse states, "At the current time, the government angels seem to be a bit out of control and lost their moral compass."

Response: Please see response to Mr. Finch's comments on page 2 regarding the "drinking water" comment. The remaining comments are addressed in responses 1 and 4 of the Response to Comments.

Assemblywoman Nicole M. Parra, Thirtieth District, 4 November 2005

Many coalition leaders and farmers were surprised to see the "very significant changes proposed for the Irrigated Lands Program" when they were released in October. The letter states, "There are three new Board members who must become familiar with the program in order to make well-informed decisions about changes to the program." Assemblywoman Parra recommends the Board hear the Proposed Orders but "limit its actions to simply extending the expiration of the Program without further changes" because there has not been adequate time to analyze the proposed changes or for education of Board members. If the Board is inclined to make significant changes to the program, it should extend the Program for 90 days without changes to provide time for analysis, comment, interaction with the Board and staff, and education of the Board before such action is taken.

Response: These comments are addressed in response 1 of the Response to Comments.

Ms. Diane Rathmann, Linneman, Burgess, Telles, Van Atta, Vierra, Rathmann, Whitehurst & Keene, 21 November 2005

Ms. Rathman's letter is on behalf of the San Joaquin Valley Drainage Authority, which recommends extending the 2003 Conditional Waivers with no changes for five years to provide growers with a stable regulatory program and includes background information and discussion of the progress Coalition Groups have made. The letter also includes the following six comments on the Proposed Orders:

1) Any changes to the program should be proposed compared to the existing documents. The format of the Proposed Orders make it very difficult if not impossible to determine what changes have been made to the Program. Staff should have used a redline version that tracks changes. The highlighted version previously provided by staff does not indicate deletions in the existing documents. Given the complexity of the Program's document structure, each change to every document must be easily ascertained, which is through a redline document comparing the Tentative Renewal Documents to the Proposed Orders.

2) The 2003 Conditional Waivers acknowledge that agriculturally related water quality problems will take time to resolve in Findings No. 13 and No. 40. The Proposed Orders do not include the statements in those Findings. Reasonable expectations of the Program must be maintained.

3) Table 1 of Attachment A also requires immediate compliance with the receiving water limitations rather than incorporating exemptions or implementation schedules that are in the Basin Plan. Table 1 needs to include a footnote clarifying that receiving water limitations are subject to applicable exemptions and compliance schedules. Furthermore, the table includes references to MCLs, but Resolution No. 88-63 provides exceptions. The MUN applicability could appropriately be addressed through technical committees, but the Proposed Orders do not include the possibility of

any such accommodation. Without these exceptions, some receiving water limitations will be impossible to meet.

4) Rather than change the membership list requirement in the 2003 Conditional Waivers, the Board should "enforce the current provisions of the order. If a coalition group refuses to accommodate the requests of the Regional Board the Executive Officer has many options to compel compliance, including the termination of waiver coverage for that coalition group. If fact (sic), strong enforcement of the current membership list provisions will provide greater accountability by sending a message to all coalitions that the terms of the waiver will be enforced." If the Regional Board's response to perceived noncompliance with the waiver conditions is to modify the Order, then accountability will be weakened. "In order to strengthen accountability sanctions must be linked with the noncompliant conduct." Accountability is also recognizing commendable actions of individuals and coalitions. "Those coalitions and individuals that meet or exceed the expectations of the conditional waiver order should be acknowledged for their efforts, rather than saddled with burdensome program changes to address perceived enforcement problems."

5) The letter recommends the following definition be added to Attachment A in order to avoid conflicts with state statutes regarding joint powers authority:
   ""Member," "members," and "member Discharger" – refer to individuals, entities, or other parties that have "knowingly elected" to participate in the Coalition Group Conditional Waiver."
   Furthermore, it is unclear what the difference between the Water Quality Plan and Management Plan is. The letter recommends combining the two documents.

6) The letter includes 14 recommended language changes.

Response:

1) *Staff provided the Tentative Renewal Documents in plain text because most of the text was re-organized to provide better readability, not deleted or changed. The redline version was extremely confusing because it showed the moved text as deleted in one area and added as new language in another area. Staff did not intend to make the document changes confusing, but to provide the proposed changes in the most effective manner possible under the circumstances.*

2) *Finding Nos. 13 and 40 in the 2003 Conditional Waivers are contained in Finding Nos. 24 and 25 of the Coalition Group Conditional Waiver. Those findings still acknowledge that the waiver sets forth a time schedule and that water quality will be improved over time. Findings Nos. 30, 35, and 53 also contain relevant information about the process for attaining receiving water limitations. Therefore, no change is necessary.*

3) *See Response 10 listed under the comments of the Ms. Debra Liebersbach, Turlock Irrigation District (TID), 21 November 2005.*

4) *We do not agree that the proposed change regarding membership is burdensome. If the Board strictly enforced the membership provision of the 2003 Conditional Waivers, then, from a staff perspective, many of the Coalition Groups would likely lose waiver coverage.*

5) *The Proposed Orders as well as the 2003 Conditional Waivers require Coalition Groups and Individual Dischargers, upon notice by the Executive Officer, to submit a technical report called a Management Plan to the Regional Board upon a determination by either an individual Discharger*

or the Coalition Group that a discharge is causing or contributing to an exceedance of receiving water limitations. The Water Quality Plan is a requirement of the Proposed Orders to identify potential management practices in areas of known water quality concerns. Both of these Plans involve the implementation and evaluation of management practices. In simpler terms, the Management Plan requires action upon explicit request by the Executive Officer and the Water Quality Plan is a planning document for Coalition Groups. Management Plans should not be needed if the monitoring, assessment, Water Quality Plans, and the iterative process are effective and adequately address water quality problems.

Mr. Steven Shaffer, Department of Food and Agriculture, 14 November 2005
The letter provides comments that DFA already provided in a 4 November 2005 letter.

Response: The comments in this letter are addressed in the Response to Comments.